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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,006	10/17/2003	Russell T. White JR.	END920030046US1	4391
23550	7590	06/02/2006	EXAMINER	
HOFFMAN WARNICK & D'ALESSANDRO, LLC 75 STATE STREET 14TH FLOOR ALBANY, NY 12207			LEVINE, ADAM L	
			ART UNIT	PAPER NUMBER
			3625	

DATE MAILED: 06/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/688,006	WHITE, RUSSELL T.
	<b>Examiner</b>	<b>Art Unit</b>
	Adam Levine	3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 16 February 2006.
- 2a) This action is **FINAL**.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-22 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-22 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

## DETAILED ACTION

### *Response to Amendment*

In reply to the office action mailed November 16, 2005, Applicant has filed the response dated February 16, 2006. In this response, Applicant has amended claims 1,6,8,10,13,14,16,19, and 21, and has presented remarks. Remarks and currently pending claims 1-22 will be addressed in this office action.

#### Pertaining to rejection under 112, first paragraph, in the previous office action

Claims 6,7,10,16, and 21 were rejected because they contained subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. These claims were directed to variations of "maintaining the frequency." This difficulty was partly the result of indefiniteness in the independent claims but was exacerbated by additional indefiniteness in claims that depended from them. Applicant has amended independent claims 1,8,14, and 19, and has also amended the dependent claims 6,10,16, and 21, that were rejected under 112, first paragraph. The compound result of both sets of amendments is that the difficulty presented by dependent claims 6,10,16, and 21 has been resolved. The rejection with regard to those claims is withdrawn. Claim 7 has not been amended but the result of the other amendments removes the 112, first paragraph problem from claim 7. The claim is still indefinite, however, as noted below.

Pertaining to rejection under 112, second paragraph, in the previous office action

Claims 1,2,8,9,13,14, and 19 were rejected under 112, second paragraph, in the previous office action. Claims 1,8,13,14, and 19 have been amended to address these rejections and are no longer defective. The rejection is withdrawn with regard to claims 1,8,13,14, and 19. Rejection of claims 2 and 9 is withdrawn. Amendments to the independent claims from which they depend have served to sufficiently clarify claims 2 and 9.

***Response to Arguments***

Pertaining to rejection under 102(b) in the previous office action.

Applicant's arguments filed February 16, 2006, have been fully considered but they are not persuasive. Applicant argues:

- Spiegel fails to teach that each of the items in the hierarchical structure is located using a query for each level of the hierarchical structure: Applicant argues that because Spiegel teaches using hyperlinks to display the results of a query, it therefore does not also teach using a query for each level. This is incorrect. Spiegel's hyperlinks are used to display the result of the query. They are not the means for initially locating the item, but the description of and reference to the location once the location has been found. In Spiegel, a hierarchical structure query search is used to find the item in the hierarchical structure, and the item is then presented using a hyperlink. This is a level of functionality that is in addition to, not in lieu of that in the present application. The same paragraph cited in

Applicant's remarks clarifies this in describing the display of a featured category, "it is actually found under the following path: Books\Sports & Outdoors\Events\Olympics," each level of the path indicating a query level in the hierarchical structure (see at least column 7 lines 12-15).

- Applicant submits that Spiegel fails to teach automatically generating the query for each level of the hierarchical structure: Given the respective inventions as disclosed and described in their specifications, this argument appears to essentially make the same point as the above. In recalling an item, the query is automatically generated for each level of the hierarchical structure. This is performed by both the present invention and the prior art as the query levels of the item are recalled from storage and/or replicated recursively in order to present the new query in process while bringing the highlighted popular item to the front of a category or subcategory in which the item appropriately belongs. Spiegel refers to its hierarchical structure as a browse tree, and to query levels as nodes (which can refer to either categories or items). Spiegel describes automatically identifying nodes and calling them to attention by elevating them along child-parent paths. These paths are the hierarchical query levels described in the present application (see at least column 1 lines 60-66, column 2 lines 25-30, 41-43). This means that the each level of the query is automatically generated and repeated.

- Applicant submits that Spiegel also fails to teach storing the operations performed by a user to select an item in the hierarchical structure and analyzing the stored operations: Applicant argues that storing and analyzing operations performed to select the item are not inherent but fails to address that which is explicitly stated in Spiegel. The cited passages of Spiegel disclose storing the operations performed by a user to select an item in the hierarchical structure and analyzing the stored operations (see at least figs.2-4, column 6 lines 5-20. Also, see at least Figs.1B,5,7,9; column 9 line 64-column 10 line 26).

Applicant is reminded that the Examiner cites particular columns and line numbers in the reference as applied to the claims for Applicant's convenience. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the claims, other passages and figures may apply as well. It is respectfully requested that, in preparing responses, the Applicant fully consider the reference in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

### ***Claim Objections***

Claim 7 is objected to because of the following informalities: Claim 7 is indefinite because it is unclear whether the frequency refers to the record of the frequency of purchase or the actual frequency of purchase. There is a strong implication for the prior interpretation in light of the specification and previous claims, and because the

specification is not enabling for the latter interpretation as noted in the prior rejection under 112 paragraph one, however the claim should be clarified. The following is suggested: "wherein a separate record of the frequency of purchase of each of the items is maintained...". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**1. Claims 1-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Spiegel (US Patent No. 6,466,918).**

Spiegel teaches all the limitations of Claims 1-22. For example Spiegel discloses a method for storing items in a hierarchical structure, allowing users to select items within that structure, identifying frequently purchased items, and elevating them for display on a higher level in the structure than that on which they would normally appear (see at least Abstract, Figs. 1A-4, column 1 lines 5-15). Spiegel further discloses:

- storing items in a hierarchical structure: wherein each of the items is located using a query for each level of the hierarchical structure (see at least Abstract, Figs. 1A-8, column 1 lines 25-59).
- identifying at least one high frequency item: wherein the at least one high frequency item is an item that is frequently purchased (see at least Abstract, Fig.

3, column 1 lines 7-13, column 1 line 60 – column 2 line 36, column 6 lines 5-20); maintaining a record of the frequency that each of the items has been purchased (see at least Abstract, column 2 lines 12-24, column 3 lines 13-29, column 6 lines 5-20, 30-39. Please note: this element is interpreted as referring to the storage of information regarding the frequency of purchase of each item.); separately maintaining records of frequency that each of the items has been purchased for each of a plurality of groups of users (see at least column 7 line 59-column 8 line 7, column 9 line 64 – column 10 line 16.).

- automatically generating the query for each level of the hierarchical structure: to display the at least one high frequency item on a high level page (see at least Abstract, Figs. 1A,2-4,11; column 1 line 60 – column 2 line 4, column 2 lines 26-36, column 6 lines 5-20).
- presenting the item to an administrator: selecting at least one high frequency item for display on the high level page (see at least Abstract, Figs. 1A,2-4,11; column 1 line 60 – column 2 line 4, column 2 lines 26-36, column 6 lines 5-20).
- storing the operations performed by a user to select an item in the hierarchical structure: analyzing the stored operations, obtaining the query for each level based on the stored operations (see at least Abstract, Figs. 1-4,5,7,9,11; column 1 line 60 – column 2 line 4, column 2 lines 26-36, column 6 lines 5-20, column 9 line 64-column 10 line 26.).

- an identification system for identifying a user: (see at least column 2 line 46 – column 3 line 12, column 6 line 40 – column 7 line 5, column 11 lines 34-50, column 12 line 61 – column 13 line 7).

Pertaining to system and computer program product Claims 14-18 and 19-22

Rejection of Claims 14-18 and 19-22 is based on the same rationale as noted above.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adam Levine whose telephone number is 571.272.8122. The examiner can normally be reached on M-F, 8:30-5:00 Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 571.272.6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Adam Levine  
Patent Examiner  
May 26, 2006

  
Primary Examiner